IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4392 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJUBHAI KABHAI @ KHODABHAI MALI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 4392 of 2001

MS DR KACHHAVAH for Petitioner No. 1

RULE SERVED for Respondents No. 1,3

MR SS PATEL, AGP for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 07/12/2001

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by the order dated 19-5-2001 passed by the Police Commissioner, Vadodara City nd she has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, she cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned APP for the State. Also perused the material on record. It is submitted by the learned advocate for the petitioner that the detaining authority has relied upon four criminal cases registered against the detenu under Secs.66-B, 65-E and 81 of Bombay Prohibition Act, three before Makarpura Police Station and one before South Division of Prohibition Squad of Vadodara City in passing the order of detention. It is further submitted that last offence was registered against the detenu on 16-4-2001 and order of detention has been passed on 9-5-2001. According to learned advocate for the petitioner, the detenu has submitted a representation by R.P.A.D. to the detaining authority through advocate on 8-6-2001 and same has been forwarded to the State Government and before receiving the said representation, State has confirmed the detention order and rejected said representation on 20-6-2001, but same has been communicated to the detenu on 29-6-2001 and hence, there is a delay in deciding the representation and communicating the decision to the detenu. Reply sent by the authority is ordered to be taken on record. He has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with

> continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. In the present case, it appears that the detenu has sent the representation on 8-6-2001 to the detaining authority and same has been forwarded to the State Government. It is clear from the reply received from the State Government that representation has been rejected vide letter dated 20-6-2001. However, said decision has been received by the jail authority on 29-6-2001 and same has been communicated to the detenu on the same day i.e. on 29-6-2001, i.e. after a period of 10 days of rejecting the representation by the Government and no explanation has been putforward by the authority explaining satisfactorily the delay caused in deciding the representation and communicating the decision to the detenu. In view of the above judgment of the Apex Court, the continued detention of the detenu is bad and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 19-5-2001 passed against the detenu is hereby quashed and set aside. The detenu Rajubhai Kabhai alias Khodabhai Mali is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct Service is permitted.

(R.P.DHOLAKIA,J.)

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